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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

KEVIN B. SMITH, JR., ) NO. CV 08-3348-VAP (MAN)  
Petitioner, )  
v. ) ORDER ADOPTING FINDINGS,  
DEBRA DEXTER, WARDEN, ) CONCLUSIONS, AND RECOMMENDATIONS  
Respondent. ) OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition for Writ of Habeas Corpus, all of the records herein, the Report and Recommendation of United States Magistrate Judge ("Report"), and Petitioner's Statement of Objections. The Court has conducted a *de novo* review of those matters to which objections have been stated in writing.

Petitioner asserts in his Objections, for the first time, that the sole habeas claim alleged in the Petition is not actually premised, as alleged in the Petition, on the Fourth Amendment but, instead, rests on asserted violations of his Fifth Amendment privilege against self-incrimination and his Fourteenth Amendment right to equal protection.

1 A district court has discretion, but is not required, to consider  
2 evidence or claims presented for the first time in Objections to a  
3 Magistrate Judge's Report and Recommendation. See Brown v. Roe, 279  
4 F.3d 742, 744-45 (9th Cir. 2002); United States v. Howell, 231 F.3d 615,  
5 621-22 (9th Cir. 2000).

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7 As the Report notes (Report at p. 8 n.2), Petitioner's mere  
8 unexplicated reference in the Petition to the Fifth and Fourteenth  
9 Amendments is unavailing, as a matter of law, to save his claim grounded  
10 in the Fourth Amendment. Petitioner's attempt, in his Objections, to  
11 re-cast his Fourth Amendment claim as one based on his *Miranda* rights  
12 and the Equal Protection Clause is equally unavailing, because  
13 Petitioner not only did not plead any such claim(s) in the Petition but  
14 also failed to do so in the state courts. (See documents lodged on  
15 August 28, 2008, Nos. 3-4.) Petitioner's re-stated version of his  
16 claim, thus, is unexhausted. Accordingly, the Court, in its discretion,  
17 declines to consider Petitioner's belatedly-raised and unexhausted new  
18 claim.

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20 Having completed its *de novo* review, the Court accepts and adopts  
21 the Report. IT IS ORDERED that: (1) Respondent's Motion to Dismiss is  
22 GRANTED; and (2) Judgment shall be entered dismissing this action with  
23 prejudice.

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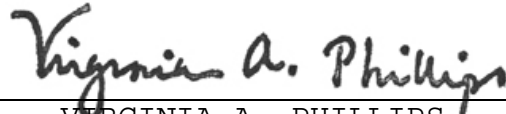
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1 IT IS FURTHER ORDERED that the Clerk serve copies of this Order and  
2 the Judgment herein on Petitioner and counsel for Respondent.

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4 LET JUDGMENT BE ENTERED ACCORDINGLY.

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6 DATED: December 6, 2008.

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9 VIRGINIA A. PHILLIPS  
UNITED STATES DISTRICT JUDGE